

1 COOLEY LLP  
JOHN C. DWYER (136533) (dwyerjc@cooley.com)  
2 JESSICA VALENZUELA SANTAMARIA (220934) (jvs@cooley.com)  
BRETT H. DE JARNETTE (292919) (bdejarnette@cooley.com)  
3 JESSIE SIMPSON LAGOY (305257) (jsimpsonlagoy@cooley.com)  
3175 Hanover Street  
4 Palo Alto, CA 94304-1130  
Telephone: (650) 843-5000  
5 Facsimile: (650) 849-7400

6 Attorneys for Defendants  
W. DENMAN VAN NESS, WILLIAM K. BOWES, JR.,  
7 PETER BARTON HUTT, JOSEPH M. LIMBER,  
KELVIN M. NEU, PATRICK J. SCANNON,  
8 JOHN VARIAN, TIMOTHY P. WALBERT,  
PAUL D. RUBIN AND JACK L. WYSZOMIERSKI  
9 and Nominal Defendant XOMA CORPORATION

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 DEBORAH A. FIESER, derivatively on  
behalf of XOMA CORPORATION,

14 Plaintiff,

15 v.

16 W. DENMAN VAN NESS, WILLIAM K.  
17 BOWES, JR., PETER BARTON HUTT,  
JOSEPH M. LIMBER, KELVIN M. NEU,  
18 PATRICK J. SCANNON, JOHN  
VARIAN, TIMOTHY P. WALBERT,  
19 PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant  
20 XOMA CORPORATION,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

Case No. 3:15-CV-05236-JST

**JOINT STIPULATION AND ~~PROPOSED~~  
ORDER OF DISMISSAL PURSUANT TO  
FEDERAL RULE OF CIVIL PROCEDURE  
41(a)(1)(A)(ii)**

Judge: Honorable Jon S. Tigar

1 WHEREAS, Joseph Markette (“Markette”) filed a securities class action lawsuit against  
2 XOMA Corporation (“XOMA”), John W. Varian, and Paul D. Rubin relating to XOMA’s  
3 EYEGUARD-B study in the United States Court for the Northern District of California,  
4 captioned *Markette v. XOMA Corp., et. al.*, 3:15-CV-3425-HSG, on July 24, 2015 (the  
5 “Securities Action”);

6 WHEREAS, Plaintiff Deborah A. Fieser (“Fieser”) filed this related shareholder  
7 derivative action, captioned *Fieser v. W. Denman Van Ness, et. al.*, Case No. 3:15-CV-05236-  
8 JST, on November 16, 2015 (“*Fieser* Derivative Action”), naming W. Denman Van Ness,  
9 William K. Bowes, Jr., Peter Barton Hutt, Joseph M. Limber, Kelvin M. Neu, Patrick J. Scannon,  
10 John Varian, Timothy P. Walbert, Paul D. Rubin, and Jack L. Wyszomierski, as Defendants  
11 (collectively, “Individual Defendants), and XOMA as Nominal Defendant (together with  
12 Plaintiff Fieser, the “Parties”);

13 WHEREAS, Plaintiff Csoka filed a related shareholder derivative action in the United  
14 States Court for the Northern District of California, captioned *Csoka v. John Varian, et. al.*, Case  
15 No. 3:15-CV-05429-JST, on November 25, 2015 (“*Csoka* Derivative Action”);

16 WHEREAS, as of April 25, 2016, both the *Fieser* Derivative Action and the *Csoka*  
17 Derivative Action are before Hon. Jon S. Tigar;

18 WHEREAS, on May 6, 2016, the Parties filed a joint stipulation to stay the *Fieser*  
19 Derivative Action, which stated: “the Parties agree that the ruling on any anticipated motions to  
20 dismiss in the Securities Action may help inform the manner in which the Derivative Action  
21 proceeds;”

22 WHEREAS, on May 9, 2016, the Court stayed the *Fieser* Derivative Action pending  
23 future developments in the Securities Action;

24 WHEREAS, on May 19, 2016, the Court stayed the *Csoka* Derivative Action pending  
25 future developments in the Securities Action;

26 WHEREAS, on August 19, 2016, this Court ordered the *Fieser* and *Csoka* Derivative  
27 Actions related;

28 WHEREAS, on September 2, 2016, Defendants filed a motion dismiss the Securities

1 Action;

2 WHEREAS, on October 7, 2016, Plaintiff Markette filed an opposition to Defendants'  
3 motion to dismiss;

4 WHEREAS, on October 21, 2016, Defendants filed a reply in support of their motion to  
5 dismiss;

6 WHEREAS, on December 14, 2016, the Court in the Securities Action took the pending  
7 motion to dismiss filings under submission;

8 WHEREAS, on May 26, 2017, the Court in the Securities Action ordered the parties in  
9 that action to submit simultaneous supplemental briefing in light of the Ninth Circuit's recent  
10 opinion in *City of Dearborn Heights Act 345 Police & Retirement Sys. v. Align Tech., Inc.*, No.  
11 14-16814, 2017 WL 1753276 (9th Cir. May 5, 2017);

12 WHEREAS, on June 9, 2017, both parties in the Securities Action filed supplemental  
13 briefing in support of their respective motion to dismiss filings;

14 WHEREAS, on September 28, 2017, the Court in the Securities Action granted  
15 Defendants' Motion to Dismiss the Amended Class Action Complaint without prejudice and  
16 entered an order requiring Plaintiff to file and serve an amended class action complaint by  
17 October 26, 2017 (Dkt. No. 113 in the Securities Action);

18 WHEREAS, on October 25, 2017, the Court in the Securities Action granted the parties'  
19 Stipulation and Order of Dismissal Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii),  
20 in which Plaintiff Markette voluntarily dismissed the Securities Action with prejudice as to his  
21 individual claims, and without prejudice as to the unnamed class members (Dkt. No. 115 in the  
22 Securities Action);

23 WHEREAS, the Parties have met and conferred in good faith, and Plaintiff Fieser has  
24 agreed to voluntarily dismiss the above-captioned action without prejudice;

25 WHEREAS, the Parties agree that each party shall bear its own fees and costs related to  
26 this action.

27 WHEREAS, given this stipulation of dismissal, the Parties agree that the order regarding  
28 ADR issued on November 27, 2017 is moot.

1 NOW THEREFORE, THE FOLLOWING IS HEREBY STIPULATED by and between  
2 the Parties, through their respective counsel:

- 3 1. Plaintiff Fieser voluntarily dismisses the above-captioned action without prejudice  
4 pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure; and  
5 2. The Parties shall each bear their own fees and costs related to this action.

6 IT IS SO STIPULATED.

7  
8 Dated: December 4, 2017

COOLEY LLP

9  
10 /s/ Jessica Valenzuela Santamaria  
Jessica Valenzuela Santamaria (220934)

11 Attorneys for Defendants W. DENMAN VAN NESS,  
12 WILLIAM K. BOWES, JR., PETER BARTON HUTT,  
13 JOSEPH M. LIMBER, KELVIN M. NEU, PATRICK J.  
14 SCANNON, JOHN VARIAN, TIMOTHY P.  
WALBERT, PAUL D. RUBIN AND JACK L.  
WYSZOMIERSKI and Nominal Defendant XOMA  
CORPORATION

15 Dated: December 4, 2017

GREEN & NOBLIN, P.C.

16 and

17 FEDERMAN & SHERWOOD  
18 WILLIAM B. FEDERMAN

19 /s/ Robert S. Green  
20 Robert S. Green (136183)

21 Attorneys for Plaintiff DEBORAH A. FIESER

22  
23 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

24  
25 DATED: December 6, 2017

26   
27 Honorable Jon S. Tigar  
28 United States District Judge